

THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

ROSITA H. SMITH, individually and on behalf
of all similarly situated Washington State
Residents

Plaintiff,

v.

LEGAL HELPERS DEBT RESOLUTION,
LLC, a Nevada limited liability company;
LEGAL SERVICES SUPPORT GROUP, LLC,
a Nevada corporation; JEM GROUP, INC., a
Nevada corporation; MARSHALL BANKS,
LLC, a California company; JOANNE
GARNEAU, individually and on behalf of the
marital community of JOANNE GARNEAU
and ARTHUR GARNEAU; JASON SEARNS,
individually and on behalf of the marital
community of JASON SEARNS and JANE
DOE SEARNS; THOMAS G. MACEY,
individually and on behalf of the marital
community of THOMAS G. MACEY and
JANE DOE MACEY; and JEFFREY
ALEMAN, individually and on behalf of the
marital community of JEFFREY ALEMAN and
JANE DOE ALEMAN; JEFFREY HYSLIP,
individually and on behalf of the marital
community of JEFFREY HYSLIP and JANE
DOE HYSLIP; and JOHN AND JANE DOES
1-25,

Defendants.

NO. 3:11-cv-05054-RJB

**ORDER OF FINAL SETTLEMENT
APPROVAL AND DISMISSAL WITH
PREJUDICE AS TO THE LHDR
DEFENDANTS AND MARSHALL
BANKS, LLC**

ORDER OF FINAL SETTLEMENT APPROVAL AND
DISMISSAL WITH PREJUDICE AS TO THE LHDR
DEFENDANTS AND MARSHALL BANKS, LLC - 1
CASE No. 3:11-cv-05054-RJB

TERRELL MARSHALL DAUDT & WILLIE PLLC
936 North 34th Street, Suite 400
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.350.3528
www.tmdwlaw.com

1 WHEREAS, on August 30, 2012, this Court entered its Order Granting Preliminary
2 Approval of Class Action Settlement (Dkt. No. 159) (the "Preliminary Approval Order"); and

3 WHEREAS, individual notice complying with Fed. R. Civ. P. 23 was sent to the last-
4 known address of each reasonably identifiable member of the Settlement Class and Subclass,
5 and where follow-up procedures outlined in the Settlement Agreements and approved by the
6 Preliminary Approval Order have been completed; and

7 WHEREAS, a fairness hearing on final approval of the settlement was held before the
8 Court on December 7, 2012; and

9 WHEREAS, the Court, being advised, finds that good cause exists for entry of the
10 below Order; now, therefore,

11 IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

12 1. Unless otherwise provided herein, all capitalized terms in this Order shall have
13 the same meaning as set forth in the Settlement Agreements attached as Exhibits 1-2 to the
14 Declaration of Toby J. Marshall in Support of Preliminary Approval (Dkt. No. 144) and/or
15 Plaintiffs' Motion for Preliminary Approval (Dkt. No. 143).

16 2. The Court finds that notice to the Settlement Class and Subclass has been
17 completed in conformity with the Preliminary Approval Order. The Court finds that this notice
18 was the best notice practicable under the circumstances, that it provided due and adequate
19 notice of the proceedings and of the matters set forth therein, and that it fully satisfied all
20 applicable requirements of law and due process.

21 3. The Court finds that notice of the Settlement Agreements has been provided to
22 the United States Attorney General and the Washington State Attorney General in accordance
23 with 28 U.S.C. § 1715.

24 4. The Court finds it has personal and subject matter jurisdiction over all claims
25 asserted in this Litigation with respect to all members of the Settlement Class and Subclass.
26

1 5. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court
2 certifies for settlement purposes only the following Settlement Class: "All Washington
3 residents who executed an agreement with LHDR involving implementation, management or
4 maintenance of a debt settlement program and who did not execute a timely and valid exclusion
5 request in accordance with the LHDR Settlement Agreement."

6 6. Pursuant to Rule 23(c) of the Federal Rules of Civil Procedure, the Court
7 certifies for settlement purposes only the following Settlement Subclass: "All Washington
8 residents who, through the actions of Marshall Banks, became enrolled in a debt settlement
9 program with Legal Helpers Debt Resolution, LLC and who did not execute a timely and valid
10 exclusion request in accordance with the Marshall Banks Settlement Agreement."

11 7. In connection with these conditional certifications, the Court makes the
12 following findings:

13 (a) The Settlement Class is so numerous that joinder of all members is
14 impracticable;

15 (b) The Settlement Subclass is so numerous that joinder of all members is
16 impracticable;

17 (c) There are questions of law or fact common to the Settlement Class for
18 purposes of determining whether this settlement should be approved;

19 (d) There are questions of law or fact common to the Settlement Subclass for
20 purposes of determining whether this settlement should be approved;

21 (e) Plaintiff's claims are typical of the claims being resolved through the
22 proposed settlements;

23 (f) Plaintiff is capable of fairly and adequately protecting the interests of the
24 Settlement Class and Settlement Subclass members in connection with the proposed settlement;

25 (g) For purposes of determining whether the settlement is fair, reasonable
26 and adequate, common questions of law and fact predominate over questions affecting only

1 individual Settlement Class and individual Settlement Subclass members. Accordingly, the
2 Settlement Class and Settlement Subclass are sufficiently cohesive to warrant settlement by
3 representation; and

4 (h) For purposes of settlement, certification of the Settlement Class and
5 Settlement Subclass is superior to other available methods for the fair and efficient settlement
6 of the claims of the Settlement Class and Settlement Subclass members.

7 8. The Court has appointed Rosita Smith as representative of the Settlement Class
8 and Settlement Subclass.

9 9. The Court has appointed Darrell Scott and Matthew Zuchetto of The Scott Law
10 Group, P.S. and Toby Marshall of Terrell Marshall Daudt & Willie PLLC as counsel for the
11 Settlement Class and the Settlement Subclass.

12 10. To the extent any timely-filed objections to the Settlements have been lodged,
13 the Court has considered those objections and found they do not counsel against approval of the
14 Settlements, and the objections are hereby overruled.

15 11. The terms set forth in the Settlements are approved as being fair, adequate, and
16 reasonable in light of the degree of recovery obtained in relation to the risks faced by the
17 Settlement Class and Subclass in litigating the claims. The Settlement Class and Subclass are
18 properly certified as part of these settlements. The relief provided to the Settlement Class and
19 Subclass under the Settlement Agreements is appropriate as to the individual members of the
20 Settlement Class, Subclass, and as a whole.

21 12. The Court approves the payment of \$666,122.27 in fees and costs to Class
22 Counsel as fair and reasonable based on the lodestar and percentage-of-the-fund methods,
23 which courts use to determine the reasonableness of fees. The Court reaches this conclusion
24 after analyzing (1) the number of hours Class Counsel reasonably expended on the litigation
25 multiplied by counsel's reasonable hourly rates; (2) the substantial financial recovery for
26 Settlement Class and Subclass members (3) the diligent and efficient effort utilized by Class

1 Counsel in litigating Plaintiff's claims; (4) Class Counsel's substantial experience in complex
 2 litigation and skill utilized to achieve the Settlement; and (5) the hurdles to certifying the
 3 Settlement Class and Subclass and proving liability and damages at trial.

4 13. The Court approves the incentive payment of \$5,000 to Plaintiff Rosita Smith.
 5 This award reasonably compensates Plaintiff Smith for her time and effort in stepping forward
 6 to serve as proposed class representative, assisting in the investigation, keeping abreast of the
 7 litigation, and reviewing and approving the proposed settlement terms after consulting with
 8 Class Counsel.

9 14. The Settlements are binding on all Settlement Class and Subclass members.

10 15. Each member of the Settlement Class and Settlement Subclass shall be entitled
 11 to receive a pro rata share of the Net Settlement Proceeds as set forth in the respective
 12 Settlement Agreements. Any Settlement Class Member or Settlement Subclass Member who
 13 fails to cash or deposit a disbursement check issued to that member after a period of 180
 14 calendar days has elapsed from the date on which the disbursement check was issued will not
 15 receive a share of relevant Net Settlement Proceeds but will be bound nevertheless by the terms
 16 of the relevant Settlement Agreement.

17 16. All Settlement Class Members are bound by the terms of the Settlement
 18 Agreement with the LHDR Defendants. As of that Settlement Agreement's Effective Date, all
 19 Settlement Class Members shall conclusively be deemed to have irrevocably released,
 20 relinquished, and forever discharged all claims against all released entities and individuals as
 21 set forth in the Settlement Agreement. The Settlement Agreement with the LHDR Defendants
 22 provides: "As of the Effective Date of this Settlement Agreement, Plaintiff and each and every
 23 member of the Settlement Class, individually and as a Settlement Class, for themselves, their
 24 attorneys, spouses, executors, representatives, heirs, successors, and assigns, in consideration of
 25 the relief set forth in the Settlement Agreement, the sufficiency of which is acknowledged, will,
 26 to the extent permitted by law and subject only to the exception set forth in Section III.B below,

1 fully and finally release the LHDR Defendants and all present and former LHDR members,
 2 officers, managers and employees, and their respective spouses, successors and assigns, from
 3 any and all past or present claims, debts, demands, causes of action, liabilities, losses,
 4 obligations, costs, fees, interest, attorneys' fees, expenses, damages, punitive damages, and
 5 injuries of every kind, nature and description that directly or indirectly relate to, or arise out of,
 6 or stem from the subject matter of this Action or any matters, transactions, occurrences, or
 7 omissions referred to in the pleadings or other papers filed or produced in this Action. The
 8 released claims include but are not limited to statutory claims under Washington's Debt
 9 Adjusting Law (Chapter 18.28 RCW) and Consumer Protection Act (Chapter 19.86 RCW), or
 10 other state or federal statutory laws or regulations, and common law claims, whether found in
 11 tort or contract."

12 17. All Settlement Subclass Members are bound by the terms of the Settlement
 13 Agreement with Marshall Banks. As of the settlement's Effective Date, all Settlement Subclass
 14 Members shall conclusively be deemed to have irrevocably released, relinquished, and forever
 15 discharged all claims against all released entities and individuals as set forth in the Settlement
 16 Agreement. The Settlement Agreement with Marshall Banks provides: "As of the Effective
 17 Date of this Settlement Agreement, Plaintiff and each and every member of the Settlement
 18 [Subclass], individually and as a Settlement [Subclass], for themselves, their attorneys, spouses,
 19 executors, representatives, heirs, successors, and assigns, in consideration of the relief set forth
 20 in the Settlement Agreement, the sufficiency of which is acknowledged, will, to the extent
 21 permitted by law and subject only to the exception set forth in Section III.B below, fully and
 22 finally release Marshall Banks and all present and former members, officers, managers and
 23 employees of Marshall Banks, and their respective spouses, successors and assigns, from any
 24 and all past or present claims, debts, demands, causes of action, liabilities, losses, obligations,
 25 costs, fees, interest, attorneys' fees, expenses, damages, punitive damages, and injuries of every
 26 kind, nature and description, known or unknown, that directly or indirectly relate to, or arise

1 out of, or stem from the subject matter of this Action or any matters, transactions, occurrences,
 2 or omissions referred to, or that could have been referred to, in the pleadings or other papers
 3 filed or produced in this Action. The released claims include but are not limited to statutory
 4 claims under Washington's Debt Adjusting Law (Chapter 18.28 RCW) and Consumer
 5 Protection Act (Chapter 19.86 RCW), or other state or federal statutory laws or regulations, and
 6 common law claims, whether found in tort or contract."

7 18. As of the Effective Date, all Settlement Class Members and Settlement Subclass
 8 Members are forever barred and enjoined from commencing, prosecuting or continuing to
 9 prosecute, either directly or indirectly, in this or any other jurisdiction or forum, any of the
 10 claims that are released by the respective Settlement Agreements or barred by the entry of
 11 judgment in this action.

12 19. Neither this Order nor any aspect of the Settlement Agreements is to be
 13 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
 14 part of the LHDR Defendants or Marshall Banks. The LHDR Defendants and Marshall Banks
 15 specifically deny any liability. Each of the Parties to the settlements entered into the Settlement
 16 Agreements with the intention to avoid further disputes and litigation with the attendant
 17 inconvenience and expenses.

18 20. This Court hereby dismisses this action with prejudice as to all Settlement Class
 19 and Subclass members except those who have timely and properly excluded themselves from
 20 the Settlement Class or Subclass. Individuals who have timely and properly excluded
 21 themselves from the Class and are thus not bound by this Judgment are listed on Exhibit A,
 22 which is attached to this order.

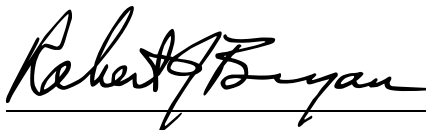
23 21. The Clerk shall enter final judgment dismissing with prejudice all claims against
 24 the following Defendants: Legal Helpers Debt Resolution, LLC; Jason Searns, individually and
 25 on behalf of the marital community of Jason Searns and Jane Doe Searns; Thomas G. Macey,
 26 individually and on behalf of the marital community of Thomas G. Macey and Jane Doe

1 Macey; Jeffrey Aleman, individually and on behalf of the marital community of Jeffrey
 2 Aleman and Jane Doe Aleman; Jeffrey Hyslip, individually and on behalf of the marital
 3 community of Jeffrey Hyslip and Jane Doe Hyslip; and Marshall Banks, LLC. This dismissal
 4 shall be without costs or attorneys' fees to any Party.

5 22. The dismissal of the claims against the LHDR Defendants and Marshall Banks
 6 is without prejudice to the rights of the Parties to enforce the terms of the Settlement
 7 Agreements and the rights of Class Counsel to seek the payment of fees and costs as provided
 8 for in the Settlement Agreements. Without affecting the finality of this Order, or the judgment
 9 to be entered pursuant hereto, in any way, the Court retains jurisdiction over the claims against
 10 the LHDR Defendants and Marshall Banks for purposes of resolving any disputes that may
 11 arise under the Class Settlement Agreement.

12 23. The dismissal of the claims against the LHDR Defendants and Marshall Banks
 13 is without prejudice to the rights of Plaintiff and Settlement Class and Subclass members to
 14 pursue claims against the non-settling Defendants in this action, including Legal Services
 15 Support Group, LLC; JEM Group, Inc.; and Joanne Garneau, individually and on behalf of the
 16 marital community of Joanne Garneau and Arthur Garneau.

17
 18 DONE IN OPEN COURT this 7th, day of December, 2012.

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 20 

21 ROBERT J. BRYAN
 22 United States District Judge
 23
 24
 25
 26

Presented by:

TERRELL MARSHALL DAUDT & WILLIE PLLC

By: /s/ Toby J. Marshall, WSBA #32726

Beth E. Terrell, WSBA #26759

Email: bterrell@tmdwlaw.com

Toby J. Marshall, WSBA #32726

Email: tmarshall@tmdwlaw.com

Jennifer Rust Murray, WSBA #36983

Email: jmurray@tmdwlaw.com

936 North 34th Street, Suite 400

Seattle, Washington 98103-8869

Telephone: (206) 816-6603

Darrell W. Scott, WSBA #20241

Email: scottgroup@mac.com

Matthew J. Zuchetto, WSBA #33404

Email: matthewzuchetto@mac.com

SCOTT LAW GROUP

926 W Sprague Avenue, Suite 583

Spokane, Washington 99201

Telephone: (509) 455-3966

Attorneys for Plaintiff

EXHIBIT A

ORDER OF FINAL SETTLEMENT APPROVAL AND
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DEFENDANTS AND MARSHALL BANKS, LLC - 1
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TERRELL MARSHALL DAUDT & WILLIE PLLC
936 North 34th Street, Suite 400
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.350.3528
www.tmdwlaw.com

List of Individuals Who Executed Timely and Proper Exclusion Requests

1. Christina Geery
2. Patricia Miles
3. Kathleen Ballard

CERTIFICATE OF SERVICE

I, Toby J. Marshall, hereby certify that on December 7, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jerry Kindinger
Email: kindinger@ryanlaw.com
Bryan C. Graff
Email: graff@ryanlaw.com
RYAN, SWANSON & CLEVELAND, PLLC
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
Telephone: (206) 464-4224

Attorneys for Defendants Legal Helpers Debt Resolution, LLC, Jason and Jane Doe Searns, Thomas G. and Jane Doe Macey, Jeffrey and Jane Doe Aleman, and Jeffrey and Jane Doe Hyslip

Gregory E Jackson
Email: gregj@fjtlaw.com
FREIMUND JACKSON TARDIFF & BENEDICT GARRETT
711 Capitol Way South, Suite 602 and 605
Olympia, Washington 98501
Telephone: (360) 534-9960

Richard Epstein, *Admitted Pro Hac Vice*
Email: richard.epstein@gmlaw.com
Rebecca Bratter, *Admitted Pro Hac Vice*
Email: rebecca.bratter@gmlaw.com
GREENSPOON MARDER PA
200 East Broward Blvd., Suite 1500
Ft. Lauderdale, Florida 33301
Telephone: (954) 491-1190

Attorneys for Defendants Legal Services Support Group, LLC and JEM Group Inc.,

1 Christopher G. Emch
2 Email: emchc@foster.com
3 FOSTER PEPPER, PLLC
4 1111 Third Avenue, Suite 3400
5 Seattle, Washington 98101
6 Telephone: (206) 447-4400

7 *Attorneys for Defendants JEM Group Inc. and Joanne and Arthur Garneau*

8 Todd Nunn
9 Email: todd.nunn@klgates.com
10 K&L GATES LLP
11 925 Fourth Avenue, Suite 2900
12 Seattle, Washington 98104-1158
13 Telephone: (206) 623-7580

14 Whitney J. Baran
15 Email: whitney.baran@klgates.com
16 K&L GATES LLP
17 618 West Riverside Avenue, Suite 300
18 Spokane, Washington 99201-0602
19 Telephone: (509) 624-2100

20 *Attorneys for Defendant Marshall Banks, LLC*

21 DATED this 7th day of December, 2012.

22 TERRELL MARSHALL DAUDT & WILLIE PLLC

23 By: /s/ Toby J. Marshall, WSBA #32726
24 Toby J. Marshall, WSBA #32726
25 Email: tmarshall@tmdwlaw.com
26 936 North 34th Street, Suite 400
Seattle, Washington 98103-8869
Telephone: (206) 816-6603

Attorneys for Plaintiff